Filed 7/27/10 In re Markayla CA3

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

In re MARKAYLA B. et al., Persons Coming Under the Juvenile Court Law.	
SACRAMENTO COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES, Plaintiff and Respondent, v. ONIKA B., Defendant and Appellant.	C061843 (Super. Ct. Nos. JD224705, JD224706, JD224707, JD224708, JD224709, JD229125)

Appellant Onika,[1] the mother of the minors Markayla, Javon, Jerrecka, Nicolas, Calin, and Marquize, appeals from juvenile

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[1] This appeal involves appellant's 12 children, all of whom share the same last name, and five different fathers. The Reporter of Decisions prefers the use of first and last initials to designate children in dependency cases. We are not bound by that preference. (See *In re Carlos T.* (2009) 174 Cal.App.4th 795, 798, fn. 1; *In re Edward S.* (2009) 173 Cal.App.4th 387, 392, fn. 1.) We conclude it is essential to utilize the first names alone of all 12 children, and the adults, for the sake of

court orders sustaining a dependency petition and amended dependency petitions, and orders entered at the disposition hearing (Welf. & Inst. Code, §§ 300, 342, subd. (b), 387, 395; undesignated section references are to the Welfare and Institutions Code). She contends: (1) it was an abuse of discretion for the juvenile court to limit her right to make educational decisions for the minors; (2) the dispositional order continuing removal of the minors is not supported by substantial evidence; (3) it was an abuse of discretion to deny reunification services; and (4) dependency jurisdiction over Calin should have been terminated. We affirm.

BACKGROUND

In August 2006, appellant lived in her Elk Grove home with her then 10 children: Marvell (born November 1988), Calin (born March 1991), Nicolas (born April 1993), Jerrecka (born April 1994), Javon (born June 1995), Markayla (born December 1996), Taleshia (born December 1997), Kaneia (born December 2000), Michael, Jr., (born March 2002), and Darian (born August 2004).[2] The Sacramento County Department of Health and Human Services (DHHS) filed nondetained dependency petitions, alleging jurisdiction under section 300, subdivision (b) (failure to protect) on August 9, 2006.

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clarity and to enable the reader to understand what has happened in this case.

[2] Marvell, Taleshia, Kaneia, Michael, Jr., and Darian are not parties to this appeal.

Appellant had child welfare referrals dating back to 1999, including three sustained referrals for general neglect and one for severe neglect. She refused offers of general services twice, before finally accepting food, emergency in-home caretakers, 10 beds, and a refrigerator in July 2005.

Appellant had 10 of her children with three different fathers, Mervin, Jerry, and Michael, none of whom she married.[3] Jerry lived with appellant and her children from 1993 to 1999. His lengthy criminal record includes three felony convictions for domestic violence in 1996, 1998, and 2004, and a misdemeanor conviction for the same offense in 1995. Appellant admitted Jerry committed significant acts of domestic violence against her. Michael, the father of Darian, Michael, Jr., and Kaneia was deceased. Mervin, the father of Marvell and Calin, was a diagnosed paranoid schizophrenic with prior convictions for narcotics and domestic violence offenses.

On an unannounced visit in May 2006, the social worker found a foul odor coming from appellant's home, piles of trash and clothing throughout the interior, a severely stained carpet, and a mouse near a pile of trash in the garage. There was one

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[3] Appellant had two more children during the dependency, for a total of 12 children with five different fathers, three of whom were alive during the dependency. Mervin is the father of Marvell and Calin. Jerry is the father of Nicolas, Jerrecka, Javon, Markayla, and Taleshia. Michael, the father of Kaneia, Michael, Jr., and Darian, is deceased. Joseph, the father of Joanna, is deceased. Marcus is the father of Marquize.

couch and two beds for 11 people, the refrigerator was mostly empty, and there was no food in the cabinets.

Appellant would clean the house after Child Protective Services (CPS) visited, but it would stay clean for only a few days. Appellant refused to participate in parenting classes and other services.

Interviewed after the petition, appellant admitted prior referrals for maintaining an unsafe and dirty home, and refusing to comply with services. Agreeing there was no food in the cabinets, appellant claimed food was elsewhere. She claimed DHHS always seemed to inspect the home when she was running low on food stamps.

The children said there was enough food to eat and most of them said the house was clean. Nicolas, Jerrecka, Javon, Markayla, and Taleshia were in special education with individualized education programs (IEP). According to a school psychologist who knew the family, the home was "very very dirty," and might have had fleas in the carpet. The psychologist believed some of the older children, who appeared to have cognitive delays, were looking after the younger children.

Appellant had another child, Joanna, in September 2006.[4] Joseph, the child's father was deceased.

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[4] Joanna, appellant's eleventh child, is not a party to this appeal.

In October 2006, the juvenile court ordered the petitions held in abeyance for six months.

In November 2006, appellant signed a corrective actions plan promising to address her home's dirty pool, lack of food, and trash, and to get services for her children at Alta Regional Services (ARS). Social workers decided to help appellant thoroughly clean the house in January 2007.

In February 2007, Elk Grove police responded to appellant's home after someone there called 911 twice and hung up. Upon arrival, officers heard a child crying loudly and screaming. They found a filthy home with dirty clothes and food lying everywhere in the house. Cans of food which had been opened with a knife were left throughout the house; an opened can with jagged edges was found next to Joanna, the five-month-old baby, lying on the floor. The house had an overwhelming smell of garbage, urine, and feces, and feces were smeared over the bathroom walls and floor.

Mounds of clothes were strewn throughout the house; they were so high the door from the home to the garage could not be opened. A social worker observed it was the second time in a few days that the children had been left unattended for a long time. The bathtubs were full of water and cleanser. Five-year-old Michael, Jr., was found on the bathroom floor next to one of the tubs.

The unsecured swimming pool was filthy with algae, garbage, and toys floating at the top. The pool, buzzing with mosquitoes, was like a swamp. It was too dark to see the

bottom, and officers had the fire department drag the pool to ensure no children were present.

The kitchen smelled of rotting garbage. The refrigerator was bare except for rotting onions and two heads of rotting lettuce. There was no can opener in the kitchen; it appeared that the children would open cans with a steak knife when they were hungry. A package of meat was left to rot on the center island next to a bottle of Pine-Sol.

The stairs were littered with garbage, and a broken table containing a plate with moldy food was at the top of the stairs. The furniture DHHS had obtained for the family was broken. Knives were all over the house, and a pair of scissors was left within the reach of the children. The stove did not work; gas burners were on but not lit, and the house smelled of gas.

The children were placed in protective custody. Teenager Marvell said he "was waiting for this to happen[.]" Another teenager, Jerrecka, was taking care of the baby, Joanna, but was unaware of any diapers or formula in the home. Six-year-old Kaneia was scared because appellant was not around. She was glad someone would be caring for her.

Neighbors said the children were continuously unsupervised, and rode their bicycles in the street without helmets. They also complained of the stench emanating from garbage on the side of the house. One neighbor said 10-year-old Markayla would come to the neighbor's home and tell the neighbor she was left to care for Joanna, the baby.

Appellant was arrested on 22 counts of felony child abuse. DHHS also filed first amended petitions in February 2007, alleging jurisdiction under section 300, subdivisions (b) and (g). Appellant told a social worker "the house was not in the best shape, . . . but it was not in the worst shape either. There were little stuff like clothes and shoes here and there." (*Sic*.) She changed the subject when asked if she told the children of her whereabouts when she was gone, later insisting she called the home at least 10 times during her absence.

Appellant stated the allegation that a can with jagged edges was left within reach of baby Joanna "[n]ot true." She said the house did not smell like urine or feces. She claimed the children did not drain the bathtubs after using them. She claimed it was mud rather than feces that was smeared on the walls. There was rotten food in the house because the children would hide food they did not like.

Appellant asserted the police removed food from her cabinets to make the situation look worse. She admitted her children "make a lot of mess" and are "sometimes lazy" when told to do chores. She believed the reports were generated by racist neighbors who resented a Black single mother living with 11 children in their neighborhood. Appellant claimed her children were removed due to discrimination and unfair treatment by the police.

A psychological evaluation of appellant prepared in June 2006 determined appellant was evasive and defensive about her parenting. Appellant was not forthcoming with information on

common stressors or minor defaults in parenting her children because she did not think the problems existed. The evaluator concluded that appellant's significant difficulty in admitting faults meant it was unlikely she would seek help.

A family reunification worker assigned to the case in September 2006 reported her observations to DHHS. She noted the house was clean at times, but cluttered in other instances, raising concerns about cleanliness. Appellant often lied. She would often do the bare minimum for her children. Also, teachers said the minors' behavior improved significantly once they were placed in protective custody.

The social worker related a December 2006 visit. Jerrecka had been left to care for the four youngest children without knowing appellant's whereabouts. There was no food in the freezer, the refrigerator contained a single bell pepper, there were four or five cans of food in a cabinet, and the pantry had a single bag of beans and a bag of diapers. Neighbors reported that in November 2006, four-year-old Michael, Jr., and six-year-old Kaneia showed up barefoot and cold, claiming they were watching the younger children.

Appellant had nine in-home counseling sessions as of February 2007. The counselor observed appellant has no stress over raising so many children by herself. She appeared to have a "martyr complex" in that life centered on her children, and appellant did not have a life of her own.

Some of the minors told interviewers they slept on the floor. Then 12-year-old Jerrecka said, "I feel like I am always

watching the kids because I get tired of them yelling a lot." The minors expressed their interest in returning home with appellant.

In March 2007, the dependency petition was dismissed for Marvell after he turned 18. DHHS filed second amended petitions in May 2007 and the previous amended petitions were dismissed. The oldest minors, all teenagers -- Calin, Nicolas, and Jerrecka -- were placed with appellant while the others remained in foster care.

According to a September 2007 review report, the 11 children enjoyed their visits with appellant. However, they would get out of control at times -- kicking each other, climbing on the tables, throwing their toys at each other, and getting very upset. Appellant was very friendly with her children and did not mind when they got out of control or loud.

The report also noted appellant's home was in foreclosure. Appellant said her landlord was fighting the foreclosure, and would find her a new place if he lost the house.

A psychological evaluation determined appellant had delayed intellectual skills, along with a marked impairment in general and commonsense reasoning. She "is a person who would have significant difficulties generalizing newly acquired information to new situations and this could certainly include her parenting abilities." Appellant appeared to have more cognitive skills than she actually possessed. She did not comprehend the problems leading to the dependency. The report concluded

appellant "has essentially no insight into the problems at home and she accordingly sees no need for services."

A March 2008 report detailed further difficulty with appellant's twice-weekly visits. Upset at not reunifying with her remaining children, appellant put forth minimal effort, and blamed her children's misbehavior on the foster family agency. The visits were chaotic at times, getting so out of control that security had to be called.

Appellant did not appear to comprehend the importance of giving her children structure. She often let her children parent themselves. Appellant's Training Towards Self-Reliance (TTSR) case worker found she made very little progress in learning parenting skills, and continued to struggle with setting limits.

Appellant had great difficulty understanding she could be homeless if her landlord lost the house. When encouraged to look for other housing, she refused. Instead, she spent her energy complaining about parents in worse situations getting their children returned.

At a November 2007 meeting in her home, appellant told social workers her housing situation was fine. As they left, social workers ran into a police officer delivering a third eviction notice. The social workers confronted appellant, who first said, "He had the wrong house and was looking for someone else," but later she laughed and said she was going to tell them, but wanted to wait.

Appellant refused DHHS's offer for emergency shelter, claiming she lived in a Motel 6 on Stockton Boulevard. She was

evasive about giving social workers the room number, and said a friend got her the motel room because she had lost her identification. Teenagers Calin, Nicolas, and Jerrecka reported they had lived in a motel for about a week before moving into their maternal aunt's home.

Appellant denied living with the maternal aunt, asserting she still lived in the motel. Social workers met with appellant on February 5, 2008, and informed her they needed proof she was living in the motel. They agreed to meet her there that night at 10:00. When appellant did not show up at the appointed time, the social workers talked to the front desk clerk at the motel and determined she was not living there. Appellant continued resisting the emergency housing program, as well as parenting classes and TTSR.

A psychological evaluation diagnosed Calin with mental retardation. The evaluation found he would benefit from independent living skills support, as well as a structured behavioral approach to counseling. Appellant's IQ tested at 68. She was diagnosed with mild mental retardation, and impaired adaptive living skills.

Appellant's behavior improved by the May 2008 report. She was now compliant with TTSR and mental health services for six weeks. The report concluded appellant cared for teenagers Calin, Nicolas, and Jerrecka with a fair amount of success. Then 12-year-old Javon and 11-year-old Markayla were returned to her care in May 2008.

In September 2008, appellant appeared capable of handling her childrens' educational rights with the help of the TTSR program. She was now grateful for services, and had learned to ask for help before a situation got out of control. However, appellant still had difficulty controlling the children during visits. The children did not listen to her. They were verbally abusive toward one another. Appellant often did not see unsafe behaviors.

Similar problems with visits were related in an October 2008 report. The report also concluded Javon and Markayla were both very happy to return home with their mother. Appellant appeared capable of caring for five children in her home, although she had not shown the ability to care for all of her 10 minor children at once. While appellant completed her services, it was not clear she benefitted from them.

Appellant had her twelfth child, Marquize, in January 2009. DHHS determined appellant was living with the child's father, her boyfriend Marcus. Marcus's lengthy criminal history included felony convictions for theft and possession of drugs, as well as numerous misdemeanor convictions involving crimes of violence, including domestic violence. DHHS filed subsequent and supplemental petitions in February 2009 for teenagers Calin, Nicolas, Jerrecka, and Javon, and 12-year-old Markayla, and an original petition for the infant, Marquize, alleging domestic violence between the appellant and Marcus, as well as Marcus's drug use.

DHHS was informed that appellant and Marcus fought constantly in front of the minors. A strong smell of marijuana came from the house during many of the fights. When confronted by a social worker, appellant said Marcus was recently released from jail on a parole violation, and he neither lived in nor visited her home.

The landlord's sister, Kim, lived with appellant and the minors. She informed social workers that Marcus lives with them. Kim heard appellant tell Marcus things such as "get your hands off me" and "don't hurt me." She also saw Marcus smoke marijuana inside the home. The landlord was trying to evict appellant for destroying items in the home.

Teenager Jerrecka admitted Marcus was appellant's boyfriend, and teenager Calin said Marcus lived in their home. Appellant told DHHS that Marcus only used appellant's home as his mailing address for parole. DHHS did a background check on Marcus and discovered he had recently been released after serving two days for a parole violation.

Appellant said the domestic violence allegations were false, and arose from a dispute with her landlord. Admitting her boyfriend, Marcus, "has always been unstable," appellant said she does not want him in her home although he came over "pretty frequently."

In a March 2009 interview, appellant's TTSR case manager stated appellant's participation had not been good; whenever CPS became involved she became less willing to participate in services. A social worker reported that visitation was still

supervised due to appellant's inability to redirect the children's behavior when they were all together.

Teenager Calin's teacher said he displayed little social interaction before his initial removal in 2007. While living with appellant, Calin slept on the floor, wore clothes "five sizes too big," and was once discovered wearing no underwear. After his removal in February 2007, Calin was not as tired, became happier, and was moderately social. A March 2009 report stated Calin was in the 12th grade, but had the academic and living skills of a first grader. He wet himself twice-a-week while in appellant's care.

Calin was not capable of caring for himself without prompting and assistance. He had been referred to ARS for services, but appellant refused the referral. Calin would be eligible for services on his own when he turned 18 in late March 2009.

In April 2009, DHHS filed amended supplemental and subsequent petitions (§§ 342, 387), which were substituted for the February 2009 petitions. The petitions were sustained in April 2009. The juvenile court terminated appellant's reunification services on the ground she had failed to reunify with her other children -- Taleshia, Kaneia, Michael, Jr., Darian, and Joanna. The juvenile court denied appellant's request to terminate jurisdiction over 18-year-old Calin. In addition, the juvenile court limited appellant's right to make educational decisions for the minors.

DISCUSSION

I

Appellant contends the juvenile court abused its discretion in limiting her rights to make educational decisions for the minors. We disagree.

Appellant did not enter a general objection at the contested jurisdiction and disposition hearing. She objected to the denial of reunification services, requested a goal of returning the older minors home, and asked the juvenile court to terminate Calin's case because he reached the age of majority. After raising her specific objections through argument, appellant's counsel submitted the case. She did not object to DHHS's proposal to limit her educational rights.

"In dependency litigation, nonjurisdictional issues must be the subject of objection or appropriate motions in the juvenile court; otherwise those arguments have been waived and may not be raised for the first time on appeal." (*In re Christopher B.* (1996) 43 Cal.App.4th 551, 558.)

Although "application of the forfeiture rule is not automatic," "the appellate court's discretion to excuse forfeiture should be exercised rarely and only in cases presenting an important legal issue." (*In re S.B.* (2004) 32 Cal.4th 1287, 1293.) The appellate court's discretion "must be exercised with special care" in dependency matters "[b]ecause these proceedings involve the well-being of children, [for whom] considerations such as permanency and stability are of paramount importance. [Citation.]" (*Ibid.*)

Appellant's failure to object to the order limiting her educational rights forfeits her claim. This issue is not jurisdictional, and does not, as she asserts, raise a substantial evidence question. (*In re R.W.* (2009) 172 Cal.App.4th 1268, 1277 [orders limiting educational rights reviewed for abuse of discretion].) She cannot now claim an abuse of discretion when she did not raise the matter with the juvenile court.

The claim also fails on the merits. The minors present substantial educational problems -- Calin is mentally retarded, the remaining older children are in special education with IEP's, and Markayla has an IQ of 71, placing her in the borderline range. Appellant's unwillingness to recognize problems led her to refuse to get mental health services for Calin and, generally, to resist DHHS services. In light of the minors' special needs, appellant's inability to recognize problems, and her considerable resistance to services, the juvenile court did not abuse its discretion in limiting her educational rights.

II

Appellant claims the dispositional orders continuing the removal of the minors were not supported by substantial evidence. She is mistaken.

In order to remove a child from a parent's physical custody, the juvenile court must find clear and convincing evidence that "[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or

emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's . . . physical custody." (§ 361, subd. (c)(1).) "The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. [Citation.]" (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, overruled on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

In reviewing the juvenile court's ruling, we apply the substantial evidence test, drawing all reasonable inferences to support the court's findings, and deferring its assessment of the credibility of witnesses. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 193.)

Appellant asserts there was no danger in returning the minors to her home because she ended her relationship with Marcus, and he was living out of the county. She also claims to have secured a new home, the minors were not abused or neglected, and there were no prior allegations of domestic violence. Her arguments place far too much credence on unsupported statements from interested parties who lacked credibility.

Appellant told a social worker her relationship with Marcus was over, and there had been no domestic violence between them. However, the record is full of instances where appellant deceived social workers or other people during these dependency

proceedings. She prevaricated about Marcus living with her, whether she was facing eviction from her prior home, along with where and with whom she was living after the eviction. The juvenile court gave no credence to her self-serving statements and was well within its discretion in doing so.

Appellant rests her final claim on this point on unsupported assertions made by her trial counsel at the disposition hearing, and Marcus's February 2009 assertion that he no longer lived with appellant. While appellant said her relationship with Marcus began in April 2008 and ended after four months, Calin and the landlord's sister Kim, both confirmed Marcus was living with appellant at the time of the February 2009 detention. Lacking any credible evidence supporting appellant's position, the juvenile court could reasonably conclude appellant would not stay away from Marcus.

Substantial evidence supports the juvenile court's order even if appellant's contentions are given credit. Appellant has a history of associating with violent men. Of the five fathers of her children, the survivors, Mervin, Jerry, and Marcus, all had domestic violence convictions. The other two fathers, Michael and Joseph, were deceased, and DHHS did not obtain their criminal histories.

Appellant may be correct that her child welfare history did not involve domestic violence allegations, but she still associated with violent men, and was the victim of domestic violence from a previous partner, Jerry. Although DHHS considered the domestic violence referral regarding Marcus

inconclusive for physical abuse, the juvenile court had evidence from which it could infer domestic violence -- appellant's history with Jerry and appellant telling Marcus, "get your hands off me" and "don't hurt me."

We also reject appellant's suggestion there was only evidence of a single possible use of marijuana by Marcus at her home. The landlord's sister, Kim, stated Marcus was living in appellant's home in February 2009, and smoked marijuana there. Marcus also admitted to "off and on" marijuana use for the last 16 years, last using within two to three months of his February 2009 interview. However, he tested positive for marijuana in February 2009. The juvenile court had substantial evidence to conclude Marcus repeatedly smoked marijuana in appellant's home.

The juvenile court could also consider appellant's lengthy child welfare history. When the minors were removed from the home in February 2007, they were found living in disgraceful, dangerous squalor. While the instant petition does not allege a dirty or unsafe house, there is evidence that these problems continued. Items were being destroyed within appellant's most recent household, leading to possible eviction by her landlord. Also, in March 2009, DHHS observed the children did not have beds, and appellant had exhausted her services with Furniture for Families.

That appellant recently endangered the minors in a different way is of no consequence; her history of endangering the minors through general neglect is relevant to whether the actions underlying the current petition present an ongoing

danger to the minors. What stands out from the record is appellant's inability or unwillingness to perceive and address the enduring problem with how she cares for her children, and her inability or unwillingness to benefit from services. In spite of the often heroic efforts of DHHS officials to provide services, appellant time and again either denied there was a problem or placed blame on someone else -- DHHS, neighbors, the police, or her landlord -- anyone but herself.

Appellant's sustained and intense level of denial is relevant to determining the risk of future harm to the minors. (See *In re Esmeralda B.* (1992) 11 Cal.App.4th 1036, 1044.) There was evidence she lied about her recent live-in boyfriend, and denied there was any domestic violence between them. The juvenile court could reasonably conclude appellant was in denial about the instant allegations, and her child welfare history showed leaving the minors in her care substantially endangered their well-being.

The instant allegations, appellant's history with violent men, her numerous deceptions, her inability or unwillingness to perceive she endangered the minors, and her own lengthy child welfare history, provided the juvenile court with overwhelming evidence that a return of the minors to appellant's care presented a substantial danger to them. Appellant's thoroughly documented resistance to services rendered futile any alternatives to removal. The juvenile court correctly concluded that it had no choice but to remove the minors from her care.

III

Pursuant to the bypass provision of section 361.5, subdivision (b)(10), the juvenile court denied reunification services because appellant failed to reunify with her other children -- Taleshia, Kaneia, Michael, Jr., Darian, and Joanna. Appellant contends services should have been offered pursuant to section 361.5, subdivision (c), because reunification was in the minors' best interests.

A juvenile court can bypass reunification services if it previously terminated reunification services or the parent failed to reunify with any of the minor's siblings or half siblings. (§ 361.5, subd. (b)(10).) Section 361.5, subdivision (c), provides in part: "The court shall not order reunification for a parent . . . described in paragraph . . . (10) . . . of subdivision (b) unless the court finds, by clear and convincing evidence, that reunification is in the best interest of the child."

A juvenile court has broad discretion when determining whether further reunification services would be in the best interests of the child. (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 523.) An appellate court will reverse that determination only if the juvenile court abuses its discretion. (*Id.* at pp. 523-524.) It is the parent's burden "affirmatively [to] show that reunification would be in the best interest" of the child. (*In re Ethan N.* (2004) 122 Cal.App.4th 55, 66.) "The gravity of the problem that led to the dependency also is relevant to the question of best interest." (*Ibid.*)

In support of her contention, appellant asserts DHHS admitted the denial of services was detrimental to the minors, the minors were older, returning the minors to her care would not present a substantial danger to them, the minors were bonded to appellant, and the incidents leading to the most recent detention were relatively minor. These largely unsupported assertions do not provide clear and convincing evidence that services were in the minors' best interests.

We reject appellant's contention that DHHS admitted services would not be detrimental to Calin, Nicolas, and Jerrecka, and chose to bypass services only because appellant appeared to be incapable of benefitting from them. Appellant relies on the March 2009 jurisdiction disposition report, which she claims contains that admission. Her assertion takes a statement out of context and misconstrues it.

The alleged admission from DHHS states: "[A]lthough not offering reunification services to the [appellant] may be detrimental to [Calin, Nicolas, Jerrecka, Javon, and Markayla] given there is an established bond with the [appellant], it is clear the [appellant] is cognitively incapable of benefitting from services, and by continuing to offer this [appellant] services is a disservice to [Calin, Nicolas, Jerrecka, Javon, and Markayla], who deserve stability and a caregiver able to meet their individual developmental needs."

We agree with DHHS. By the time of the 2009 jurisdiction and disposition hearing, appellant had received court-ordered services for nearly three years. She showed minimal progress in

resolving the problems underlying the first two petitions, and found new ways to endanger the minors. Appellant was diagnosed as having no understanding or insight into her problems, and would have significant difficulties learning new parenting skills.

Appellant's actions were consistent with the diagnosis. In spite of, as we earlier noted, heroic efforts by DHHS for three years, her progress was negligible. It would be a disservice to the minors to continue services, which would be, at best, futile, and could expose them to further danger.

In a diversion, appellant notes that section 361.5 addresses the parent's failure to benefit from services only in the context of denial of services pursuant to section 361.5, subdivision (b)(5) (severe physical abuse of a child under five by the parent).[5] Since her services were terminated under a

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[5] Under section 361.5, subdivision (c), if the facts show that section 361.5, subdivision (b)(5), applies, " . . . the court shall not order reunification . . . unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The social worker shall investigate the circumstances leading to the removal of the child and advise the court whether there are circumstances that indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child. [¶] The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are

different bypass provision (§ 361.5, subd. (b)(10)), appellant concludes that her inability to benefit from services is irrelevant to whether terminating services are in the minors' best interests.

Appellant is wrong. The Legislature has determined only that the juvenile court cannot order services bypassed under section 361.5, subdivision (b)(5) unless services would alleviate the reason for bypassing services under that provision -- the severe physical abuse of a child under the age of five. That does not preclude a juvenile court from considering the success of further services when applying section 361.5, subdivision (b)(10).

The reason for bypassing appellant's services, failing to reunify with her other children (§ 361.5, subd. (b)(10)), is based on the likely futility of providing her with more services. The bypass provisions in section 361.5, with "the exception of subdivision (b)(1), describe situations where provision of services is futile or detrimental to the minor, generally where the parent is unable or unwilling to participate in services or where offering services would place the minor at risk of harm or other detriment." (*In re T.M.* (2009) 175 Cal.App.4th 1166, 1171-1172.)

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unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the child may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse."

If a parent will not or cannot benefit from services, continuing services would be futile, and cruel, to the children. Reunification services are not some ritual intended to placate the parent while keeping the minors in procedural stasis. Whether appellant can benefit from more services is clearly relevant to whether services are in the minors' best interests.

The minors' love for appellant does not justify the futile act of giving her more services. As we have already set forth, she is a danger to her children. Appellant will not or cannot learn from her mistakes. She does not benefit from services. The court did not abuse its discretion by finding that it is not in the best interest of the minors to prolong already protracted dependency processes to provide further fruitless reunification services to appellant.

IV

Appellant's final contention is the juvenile court should have granted her motion to terminate jurisdiction over Calin, who had turned 18.

The purpose of dependency proceedings is "to provide maximum safety and protection for children" who are abused or neglected or at risk of abuse or neglect. (§ 300.2.) "The court may retain jurisdiction over any person who is found to be a dependent child of the juvenile court until the ward or dependent child attains the age of 21 years." (§ 303.) The court may continue jurisdiction after the child reaches the age of 18 if it finds that "termination of jurisdiction would be harmful to the best interest of the child." (§ 391, subd. (b).)

"The burden of proof on the issue of termination rests with the party seeking to terminate jurisdiction and the decision whether to terminate jurisdiction falls within the sound discretion of the juvenile court." (*In re Robert L.* (1998) 68 Cal.App.4th 789, 794.) However, jurisdiction should be retained by the juvenile court beyond a dependent's 18th birthday only when there is "an existing or reasonably foreseeable threat of harm to the child." (*In re Holly H.* (2002) 104 Cal.App.4th 1324, 1327, 1336.)

Calin was 18 years old at the time of the April 2009 disposition hearing. Appellant told the juvenile court she could assist Calin in obtaining services while giving him a home. The juvenile court disagreed, and continued Calin as a dependent.

While Calin consistently expressed his desire to live with appellant, the juvenile court did not have to defer to his wishes. Calin is mentally retarded and operates at the level of a first-grader. His developmental disabilities prevent him from living by himself. Appellant's assertion that "Calin is old enough to live on his own, either in his own residence or with" her is simply and sadly wrong.

Appellant argues jurisdiction should be terminated because she has a home for him, and she would continue to ensure that he received services. She also argues the Lanterman-Petris-Short Act (LPS Act) (§ 5000 et seq.) protects Calin from any risks associated with dismissing the dependency.

Appellant has a record of minimizing Calin's disability and refusing services for him. Unsurprisingly, Calin's behavior improved both times he was removed from appellant's care.

The possibility that Calin may receive services under the LPS Act at some point in the future does not remotely justify terminating the juvenile court's jurisdiction. There is no evidence in the record that Calin was ever considered for services under the LPS Act. If the juvenile court had granted appellant's motion, Calin would have been left to his and appellant's own devices. He cannot care for himself and appellant's care is detrimental to him. The juvenile court had no choice but to continue jurisdiction in order to protect his best interests.

DISPOSITION

The orders of the juvenile court are affirmed.

NICHOLSON, Acting P. J.

We concur:

RAYE, J.

CANTIL-SAKAUYE, J.